

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 21352.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located prior to Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year. This requirement is mandatory, and failure to comply is conclusively deemed to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976, that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the location notice is recorded and in the proper office of BLM is mandatory, not discretionary.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Where the claimant inadvertently neglects to file with the Bureau of Land Management his affidavit of annual assessment work, which otherwise was properly recorded in the county, the claim must be deemed conclusively to be abandoned under provisions

of sec. 314, Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976).

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: George Egenhoff, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

George Egenhoff appeals the November 4, 1982, decision of the California State Office, Bureau of Land Management (BLM), which declared the unpatented White Rock lode mining claim, CA MC 21352, abandoned and void because no proof of labor or notice of intention to hold the claim for 1981 was received by BLM prior to December 31, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appellant states the assessment work was performed on the claim and duly recorded in Amador County, California, but he neglected to send a copy of the proof of labor to BLM. He asserts the claim has not been abandoned and in the interest of fairness, equity and justice, and as there are no intervening rights, the BLM decision should be reversed. He attached to his appeal a copy of the proof of labor recorded August 13, 1981, in Amador County.

[1] Under section 314 of FLPMA, the owner of a mining claim located prior to October 21, 1976, must file a notice of intention to hold the claim or evidence of assessment work performed on the claim prior to December 31 of each year, both in the county where the location notice is recorded and in the proper office of BLM. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. The recordation requirement of section 314 of FLPMA that evidence of assessment work or a notice of intention to hold be filed in the office where the location notice is recorded and in the proper office of BLM is mandatory, not discretionary. Lynn Day, 63 IBLA 70 (1982).

[2,3] The purpose of section 314(a) of FLPMA is not to ensure that assessment work is done on a mining claim but rather to ensure that there is a record of continuing activity on the claim so that the Federal Government will know which mining claims on Federal lands are being maintained, and which have been abandoned. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981). The statute expressly requires that a mining claimant file the instrument recorded in the local state recording office, whether proof of labor or notice of intention to hold the claim, in the proper BLM office. Where, as in this case, the claimant forgot to file his proof of labor for 1981 with BLM, there was no discretion under the statute for BLM to determine that the claim had not been abandoned. We recognize that appellant's error was inadvertent, but neither BLM nor this Board has any authority to excuse lack of compliance with the statutory requirements of FLPMA, or to afford any relief from the statutory consequences. Peter Laczay, 65 IBLA 291 (1982). See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); Glenn J. McCrorey, 46 IBLA 355 (1980). As the Board stated in Lynn Keith:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

Appellant may wish to consult with BLM about the possibility of relocating this claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Gail M. Frazier  
Administrative Judge

